

MINUTES OF MEETING  
RUSH RIVER WATER RESOURCE DISTRICT  
CASS COUNTY HIGHWAY DEPARTMENT  
WEST FARGO, NORTH DAKOTA  
DECEMBER 15, 2010

The Rush River Water Resource District met on December 15, 2010, at 10:00 a.m. at the Cass County Highway Department, West Fargo, North Dakota.

Present were Raymond Wolfer, Chairman; William A. Hejl, Manager; Keith Monson, Manager; Carol Harbeke Lewis, Secretary-Treasurer; Kimberly Bomstad, Accounting Tech/Administrative Assistant; Sean M. Fredricks, Attorney for the Board; Chad Engels and Josh Hussell, Engineers for the Board; Rich Sieg, Cass County Highway Department Superintendent and those whose names appear on the attached roster.

**Washout in the NE 1/4 of Section 14 in Erie Township**

A washout in the NE 1/4 of Section 14 in Erie Township was discussed. Keith Weston said the best route would be to go into the Conservation Reserve Program and install a grass waterway or grass strips. Manager Hejl said it would be best not to disturb the grass in the bottom of the township road ditch. Chad Engels said multiple drop structures may be needed. Mr. Weston will work with the township on the matter.

**Drainage complaints from Amenias Township against Gerald Grieger, Jim Brown and Jeff Herr in Section 5 of Amenias Township and against Rodney Nelson and Bradley Nelson in the NW 1/4 and NE 1/4 of Section 8 in Amenias Township**

The Board received letters signed by multiple property owners requesting the Rush River Water Resource District Board to establish an assessment district for the purpose of establishing a legal drain for the drop structures in Section 18 and in Section 20 of Amenias Township. The parties all agreed the Board should continue to table taking any action on the drainage complaints filed by Amenias Township, pending the outcome of the request.

Manager Hejl discussed the matter with Keith Berndt, Cass County Engineer, and Mr. Berndt indicated he would be in favor of a legal drain because it would help protect Cass County Highway 4 two miles east of this area.

Keith Weston said there should be no problem with the drop structures if the section line culverts remain the same. If the culverts are increased, the drop structures may not be able to handle the water.

Keith Monson was now present.

At the last meeting, the Board directed Rodney Nelson to install a ditch block in the northeast corner of Section 8, so the ditch would function as it did before he altered it.

He was also directed to obtain a permit for the drainage work completed. Mr. Engels said they met with Mr. Nelson and set two stakes with elevations in the NE 1/4 of Section 8. The cut appeared to be approximately 6 inches deep. Mr. Nelson said he did not install the ditch block because there was still water in the ditch and then it froze up. Mr. Nelson said Jim Lindseth, State Water Commission, advised him not to fill the ditch. Roland Priewe said the township would be fine with waiting until spring to install the ditch block as 6 inches is not that big of a cut.

Sean Fredricks said the Board could shoulder the cost to proceed or they could ask the property owners to fund up-front costs regarding development of a legal assessment drain. Mr. Engels said it would cost \$10-15,000 to develop preliminary plans and specifications for the project. Mr. Fredricks said the process would take four or five months.

North Dakota law requires a drainage permit even when working within the slope from one township road culvert to another if the work involves changing the original depth, side slope, or location of the ditch between the culverts. A township ditch cleaning permit only allows work within the original slope, location and side slope of the ditch within the normal 33.5 foot township road easement.

Jonathan Garaas said the township developed the road system outside the standard 33' of right-of-way so there is little area for a drainage ditch. He said this water flows naturally. Mr. Fredricks pointed out if someone is doing work in a township road ditch, they need a permit from the township. In addition, if the party is deepening or widening a ditch, they need a state drainage permit if the contributing watershed area is 80 acres or more. If a drainage permit is not obtained for the work that was done, the Board will need to take action to restore the area. Roland Priewe said the township did not say farmers could not ditch. The township took the matter to the Water Resource District because the work was done outside township right-of-way. The township told Mr. Nelson if he went outside the 33' of right-of-way, he would be responsible.

It was moved by Manager Hejl and seconded by Manager Monson to direct Moore Engineering, Inc. to prepare preliminary plans and specifications, along with a cost estimate, for the construction of an assessment drain(s) in Amenia Township, at a cost not to exceed \$15,000, of which up to \$10,000 will be paid by Cass County, as indicated by the Cass County Engineer. Upon roll call vote, the motion carried unanimously.

**Application to Drain with Drain Tile #3677 for Steve Faught in the N 1/2 of Section 15 in Empire Township**

The Board next considered Steve Faught's Drain Tile Application #3677. Under the application, Mr. Faught seeks to install a drain tile system in the N 1/2 of Section 15 in Empire Township, property owned by Steven and Dawn Faught. Mr. Faught proposes to locate the outlet of the drain tile system in the SW 1/4 of the SW 1/4 of Section 11 in Empire Township, on property owned by Richard and Karen Faught. The outlet would then flow into a tributary of the Rush River.

The project will adversely impact this parcel since it will introduce new water into the SW 1/4 of the SW 1/4 of Section 11, and, therefore, a flowage easement will be necessary from Richard and Karen Faught.

The Board reviewed a map of the project. The discharge will flow through the township road ditch, so permission from the Empire Township Board will be necessary.

The Board adopted Chad Engels' proposed responses to the eight elements under 89-02-01-09.2 of the North Dakota Administrative Code. The Board further determined no hearing was necessary under 89-02-01-09.1(2) of the North Dakota Administrative Code because the Board has already determined flowage easements are necessary from adversely impacted downstream landowners, and the Board will require permission from Empire Township.

It was moved by Manager Hejl and seconded by Manager Monson to approve *Application to Drain with Drain Tile #3677* for Steve Faught in the N 1/2 of Section 15 in Empire Township, subject to the following conditions:

- 1) that applicant obtains and records (with the Cass County Recorder's office) flowage easements (and not just written consents), including language that permits saline water, from the owners of the Southwest Quarter of the Southwest Quarter of Section 11 of Empire Township, Cass County, North Dakota;
- 2) that applicant obtain written consent from the Empire Township Board of Township Supervisors to discharge into, or otherwise utilize, any of its township road ditches;
- 3) that applicant obtain written consent from the Cass County Engineer to discharge into, or otherwise utilize, any Cass County highway right of way;
- 4) that applicant obtain written permission from the owner of any land, besides land owned by applicant, on which applicant will construct the tile system; and
- 5) that applicant obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

**Application to Drain with Drain Tile #3691 for Jay Zimmerman in the SW 1/4 of Section 13 in Rush River Township**

The Board next considered Jay Zimmerman's Drain Tile Application #3691. Under the application, Mr. Zimmerman seeks to install a drain tile system in the SW 1/4 of Section 13 in Rush River Township. Connie Augustine owns the SW 1/4, subject to a Contract for Deed between Ms. Augustine and Mr. Zimmerman. Mr. Zimmerman proposes to

locate the outlet for the tile system in the SE 1/4 of the SW 1/4 of Section 13, with the tile discharge then flowing east approximately 6 miles into Cass County Drain #13. The outlet will discharge into the north side of the south section line township road in the SW 1/4 of Section 13, controlled by the Rush River Township Board, east along the south boundary of the SE 1/4 of Section 13 in Rush River Township. The discharge will then flow east in township right-of-way controlled by the Berlin Township Board, from Section 18 of Berlin Township until it outlets into Drain #13 in Section 13 of Berlin Township.

The Board and its engineer reviewed a map of the proposed project, and the Board concluded the project will adversely impact downstream properties at least 1 1/2 miles downstream of the discharge, through Cass County Highway 11. Therefore, the Board will require flowage easements from those property owners. Further, the discharge will flow through, and impact, Rush River Township and Berlin Township right of way; the Board will require applicant to obtain written permission from both Township Boards.

The Board adopted Chad Engels' proposed responses to the eight elements under 89-02-01-09.2 of the North Dakota Administrative Code. The Board further determined no hearing was necessary under 89-02-01-09.1(2) of the North Dakota Administrative Code because the Board has already determined flowage easements are necessary from adversely impacted downstream landowners, and the Board will require permission from Empire Township.

It was moved by Manager Hejl and seconded by Manager Monson to approve *Application to Drain with Drain Tile #3691* for Jay Zimmerman in the SW 1/4 of Section 13 in Rush River Township, subject to the following conditions:

- 1) that applicant obtain and record (with the Cass County Recorder's office) flowage easements (and not just written consents), including language that permits saline water, from the owners of the following parcels in Cass County, North Dakota:
  - a. Southeast Quarter of Section 13, Rush River Township; and
  - b. South Half of the South Half of Section 18, Berlin Township.
- 2) that applicant obtain written consent from the Rush River Township Board of Township Supervisors to discharge into, or otherwise utilize, any of its township road ditches;
- 3) that applicant obtain written consent from the Berlin Township Board of Township Supervisors to discharge into, or otherwise utilize, any of its township road ditches;
- 4) that applicant obtain written permission from the owner of any land, besides land owned by applicant, on which applicant will construct the tile system; and

5) that applicant obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

In addition to the conditions above, and as consented to by applicant by executing *Application to Drain With Drain Tile #3691*, the Rush River Water Resource District retains the legal authority to revoke or modify the project and the rights granted under the permit to protect the public health, safety, and welfare; to protect property; or to ensure the orderly control of water resources. In this instance, the discharge of the proposed tile project must travel approximately 6 miles before ultimately draining into Drain 13. Following its investigation of the proposed project, the Rush River Board concluded downstream adverse impacts will dissipate once the discharge reaches County Highway 11. However, if the Rush River Board later concludes the discharge adversely impacts downstream properties beyond 1 1/2 miles, the Board will have no choice but to amend the Permit to require additional downstream flowage easements as necessary.

Upon roll call vote, the motion carried unanimously.

**Reconsideration of *Application to Drain with Drain Tile #3542* for Scott Mitchell in the NW 1/4 and SE 1/4 of Section 5 in Erie Township**

At the request of Scott Mitchell, Manager Hejl and the Water Resource District Engineer met with him on site to more closely investigate his proposed project. Upon further investigation, the Board concluded the tile system will outlet into an existing, and quite substantial, natural drain, which ultimately discharges into the Rush River. With that in mind, the Board concluded the discharge will not adversely impact downstream landowners along the course of the existing natural drain. Rather, the only easement the Board will require is at the location of the discharge in the SW 1/4 of Section 4 in Erie Township, owned by Wayne Kyser.

It was moved by Manager Hejl and seconded by Manager Monson to amend the Rush River Water Resource District's decision regarding *Application to Drain #3542* for Scott Mitchell in the NW 1/4 and SE 1/4 of Section 5 in Erie Township, subject to the following conditions:

- 1) that applicant obtain and record (with the Cass County Recorder's office) a flowage easement (and not just a written consent), to locate applicant's tile discharge on the North Half of the Southwest Quarter of Section 4, Erie Township, Cass County, North Dakota;
- 2) that applicant obtain written permission from the owner of any land besides land owned by applicant, on which applicant will construct the tile system; and

3) that applicant obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Upon roll call vote, the motion carried unanimously.

**Application #2266 for Kevin Heiden to construct a ring dike in the NW 1/4 SE 1/4 of Section 17 in Harwood Township**

It was moved by Manager Hejl and seconded by Manager Monson to recommend approval of *Application #2266* for Kevin Heiden to construct a ring dike in the NW 1/4 SE 1/4 of Section 17 in Harwood Township. Upon roll call vote, the motion carried unanimously.

**Rush River Watershed Detention Site Study**

Mr. Engels distributed copies of the Draft Rush River Watershed Detention Site Study. A model will be completed in March which will show what the proposed site would do. Mr. Weston said the project may be eligible for funding under Small Watershed Program PL 566.

**Sponsoring of educators/youth leaders for Project WET**

It was moved by Manager Monson and seconded by Manager Hejl to sponsor one educator/youth leader within the Rush River Water Resource District to attend a Project WET program in 2011. Upon roll call vote, the motion carried unanimously.

**Minutes**

It was moved by Manager Monson and seconded by Manager Hejl to approve the minutes of the November 4, 2010, meeting. Upon roll call vote, the motion carried unanimously.

**Bills**

It was moved by Manager Hejl and seconded by Manager Monson to approve payment of Checks #3474 through #3482 and the electronic funds transfer, as presented. Upon roll call vote, the following Managers voted in favor: Wolfer, Hejl and Monson. The Chairman declared the motion passed.

**Motion authorizing the Secretary-Treasurer to make minor year-end transfers**

It was moved by Manager Hejl and seconded by Manager Monson to authorize the Secretary-Treasurer to make any minor year-end transfers to balance the Rush River Water Resource District 2010 budget. Upon roll call vote, the motion carried unanimously.

**Motion authorizing the Secretary-Treasurer to make transfers to/from obligated funds**

It was moved by Manager Hejl and seconded by Manager Monson to authorize the Secretary-Treasurer to make transfers to/from the obligated funds, if necessary. Upon roll call vote, the motion carried unanimously.

**Amend the 2010 Rush River Water Resource District budget**

It was moved by Manager Hejl and seconded by Manager Monson to amend the 2010 Rush River Water Resource District budget. Upon roll call vote, the motion carried unanimously.

**Red River Retention Authority**

Manager Hejl reported that the Red River Retention Authority took action to send a letter to the head of the Natural Resources Conservation Service in North Dakota and in Minnesota to request they develop, as part of the farm bill, a programmatic Environmental Impact Statement on temporary storage in the Red River Basin.

Manager Hejl said the Permitting Committee will be looking into development of a general permit, similar to what is used by the North Dakota Department of Transportation, relating to archaeological matters and Traditional Cultural Properties.

Mr. Hejl said the Retention Committee is convinced that distributed storage is a good idea, but with gated tile drainage. The committee does not intend to spend any more time discussing the Waffle Plan.

**Adjournment**

There being no further business to be considered by the Board, the meeting adjourned without objection.

APPROVED:

---

Raymond Wolfer  
Chairman

ATTEST:

---

Carol Harbeke Lewis  
Secretary-Treasurer